

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JOHN O'MARA, BRIAN NICHOLS, RICHARD)
KELLETT, MICHAEL O'CONNELL III, MARK)
MORGAN, JAMES MURPHY, DENNIS)
CORRIGAN, NEIL HABERBERGER, ROBERT)
C. MITCHELL, and RAY HEFNER)
in Their Representative Capacities as Trustees of the)
PLUMBERS AND PIPEFITTERS WELFARE)
EDUCATIONAL FUND, PLUMBERS AND)
PIPEFITTERS PENSION FUND, and PLUMBERS)
AND PIPEFITTERS LOCAL 562)
SUPPLEMENTAL PENSION PLAN AND TRUST,) Case No.
)
and)
)
PLUMBERS AND PIPEFITTERS LOCAL 562,)
a Labor Organization,)
)
Plaintiffs,)
)
v.)
)
BREAKTHROUGH PLUMBING CO., LLC,)
)
Defendant.)

COMPLAINT

COME NOW Plaintiffs, by and through their attorneys, and for their cause of action against Defendant state:

1. Jurisdiction of the cause of action and the parties hereto is conferred upon this Court by subsections (a), (b) and (c) of Section 301 of the Labor Management Relations Act of 1947, as amended, 29 U.S.C., Section 185 (hereinafter referred to as the "LMRA"), and Sections 502(e)(1) and (f) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C., Sections 1132(e)(1) and (f) (hereinafter referred to as "ERISA"). Venue in this Court is appropriate by virtue of 29 U.S.C., Section 1132 (e)(2).

2. The Plumbers and Pipefitters Welfare Educational Fund, the Plumbers and Pipefitters Pension Fund, and the Plumbers and Pipefitters Local 562 Supplemental Pension Plan and Trust (hereinafter, the “Plumbers & Pipefitters Funds”) are employee benefit plans created in accordance with the provisions of Section 302(c)(5) and (c)(6) of the LMRA, 29 U.S.C., Sections 186(c)(5) and (c)(6). The Plumbers & Pipefitters Funds are employee benefit plans within the meaning of Sections 3(3) and (4)(a) of ERISA, 29 U.S.C., Section 1002(3) and 1003(a), and are multi-employer plans within the meaning of Section 515 of ERISA, 29 U.S.C., Section 1145.

3. The Plumbers and Pipefitters Welfare Educational Fund, the Plumbers and Pipefitters Pension Fund, the Plumbers and Pipefitters Local 562 Supplemental Pension Plan and Trust are administered from offices located at 3640 Corporate Trail Drive, Earth City, MO 63045, within this judicial district.

4. Plaintiffs John O’Mara, Brian Nichols, Richard Kellett, Michael O’Connell III, Mark Morgan, James Murphy, Dennis Corrigan, Neil Haberberger, Robert C. Mitchell, and Ray Hefner are the Trustees of the Plumbers and Pipefitters Welfare Educational Fund, the Plumbers and Pipefitters Pension Fund, the Plumbers and Pipefitters Local 562 Supplemental Pension Plan and Trust, and as such, are fiduciaries within the meaning of Sections 502(a)(3) and (g)(1) of ERISA, 29 U.S.C., Sections 1132(a)(3) and 1132(g)(1).

5. Plumbers and Pipefitters Local 562 is a labor organization within the meaning of Section 2(5) of the LMRA, 29 U.S.C., Section 152(5), representing employees in an industry affecting commerce within the meaning of Section 301 of the LMRA, 29 U.S.C., Section 185.

6. Defendant is a Missouri corporation in good standing, conducting business in this judicial district. Defendant is an employer in an industry affecting commerce within the meaning of Sections 3(5), (11), (12), and 515 of the Employee Retirement Income Security Act of 1974, as

amended, 29 U.S.C., §§1002(5), (11), (12) and 1145, and Sections 2(2), (6) and (7) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C., §§152(2), (6) and (7), having an office and place of business within this judicial district.

7. Defendant has been party to a Collective Bargaining Agreement with Plumbers and Pipefitters Local 562 at all times relevant hereto.

8. Defendant is bound by various Trust Agreements relating to the Plumbers and Pipefitters Funds.

9. Under the terms of the Collective Bargaining Agreement, Defendant is required to make contributions to the Plumbers and Pipefitters Funds pursuant to the formula set forth therein, to file monthly contribution report forms and to remit dues payments to Plumbers and Pipefitters Local 562.

10. Defendant has failed to make the required contributions and dues payments.

11. The Collective Bargaining Agreement requires delinquent employers to pay liquidated damages, attorneys' fees, court costs and audit costs.

12. Section 502(g) of ERISA, 29 U.S.C., Section 1132(g), provides that in an action such as this to enforce 29 U.S.C., Section 1145, the Court shall award the unpaid contributions, interest on the unpaid contributions, liquidated damages in an amount equal to the interest or in the amount set forth in the plan, and reasonable attorneys' fees and costs.

WHEREFORE, Plaintiffs pray that this Court enter its order, judgment and decree awarding Plaintiffs the following relief for their cause of action:

- a. An order directing Defendant to submit to an audit of its books and records to determine all amounts owed;
- b. A judgment for contributions owed to the Plumbers and Pipefitters Funds;

- c. A judgment for dues payments owed to Plumbers and Pipefitters Local 562;
- d. A judgment for liquidated damages, interest, costs, and reasonable attorneys' fees, pursuant to 29 U.S.C., §1132(g) and the Collective Bargaining Agreement;
- e. For such other and further relief as the Court may consider appropriate under the circumstances.

Respectfully submitted,

HARTNETT REYES-JONES, LLC

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CERTIFICATE OF SERVICE

The undersigned certifies that on April 6, 2021, a copy of the foregoing was mailed, by Certified Mail, Return Receipt Requested, to the Secretary of Labor, United States Department of Labor, P.O. Box 1914, Washington, D.C. 20013 and to the Secretary of the Treasury, United States Treasury, 1500 Pennsylvania Avenue, Washington, D.C. 20220.

/s/ Michael A. Evans